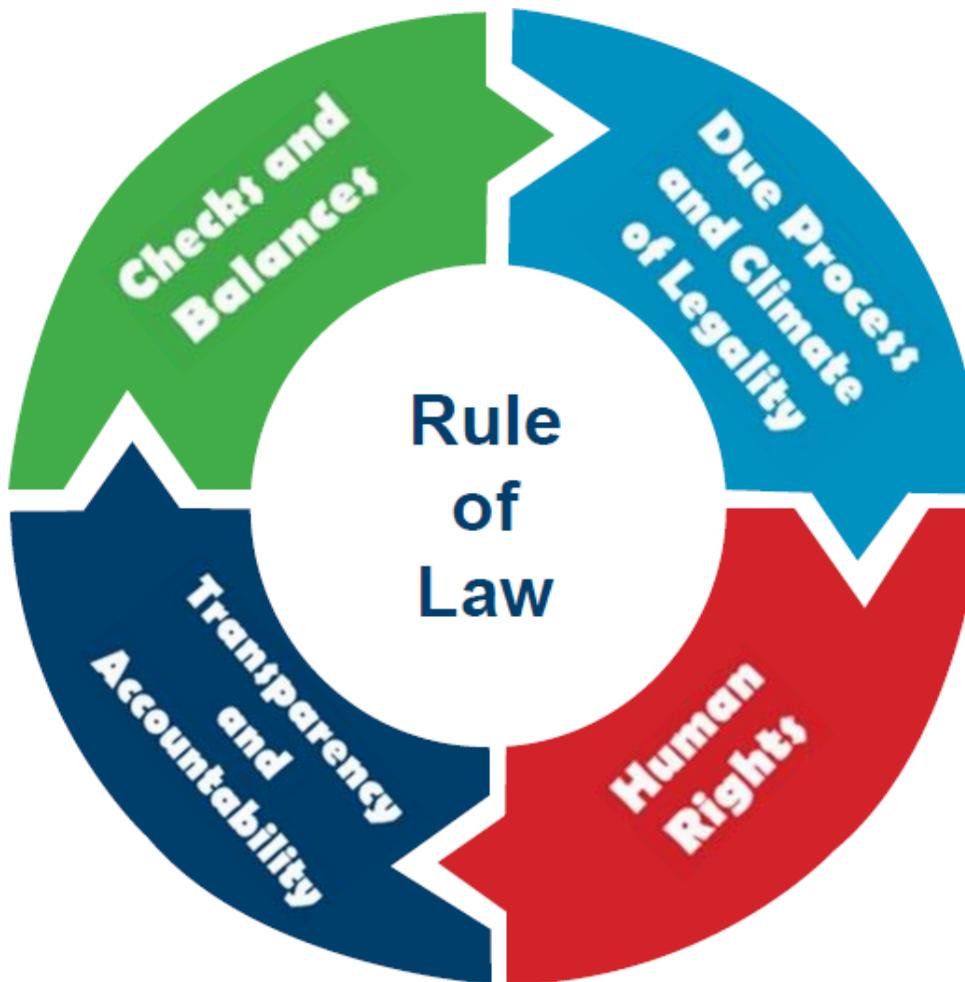




THE STATE OF THE RULE OF LAW IN UGANDA: FIRST QUARTERLY REPORT



January - March 2019

Contents

PRESIDENT’S FoREwORD	4
MESSAGE FRoM THE CEo	5
ACKNoWLEDGEMENTS	6
INTRoDUCTIoN	7
THE STATE oF HUMAN RIGHTS	8
a) Violation of Children’s rights	8
b) Protection of the Right to Life	9
c) Torture	10
d) Protection of the Right to freedom of Expression, Association and Assembly	10
e) The Right to health in regards to access to essential medicines and blood	11
f) Breach of Economic Rights under the East African Community Law	12
DUE PRoCESS AND CLIMATE oF LEGALITY	13
a) Alleged Violations by Military officers	13
b) Deportation of MTN employees	14
c) State House overreach into the work of statutory institutions	14
d) Government financial support to the Lubowa Hospital Investor	15
TRANSPARENCY AND ACCoUNTABILITY	16
a) IGG asks Internal Security organization (ISo) to investigate CoSASE	16
SEPARATIoN oF PowERS	16
Updates on Recommendations from the previous quarterly Reports	17
CoNCLUSIoN	18

PRESIDENT'S FOREWORD

“To deny people their human rights is to challenge their very humanity.” Nelson Mandela,

Last year, the Uganda Law Society (ULS) keenly followed the state of the Rule of Law in the country and also gave several recommendations. A total of four reports were published and we have since received positive feedback from various stakeholders especially government.

The ULS shall continue to keep track of issues of law and governance to ensure that the rule of law is continually upheld. While there is a general desire to uphold the rule of law we have seen an increase in the number of individuals that perpetrate impunity. This year will see an increase in public interest litigation geared towards bringing these perpetrators to account. We are also in the process of setting up regional Rule of Law committees to establish a national coverage rule of law committee that covers issues across the nation as we continue to aspire for a Uganda free of impunity. These committees will liaise with the Rule of Law advisory committee in articulation of rule of law issues concerning the various regions.

This report offers practical solutions to the issues raised and thus acts as a reference point for various stakeholders as they deliberate on the issues mentioned.

During this period, we have seen an increased violation in the following areas; -

- Child kidnap, unlawful killings and defilement of children.
- Violation of the right to life contrary to Article 22 of the 1995 Constitution of Uganda. There have been several mysterious deaths in different parts of the country as well as several cases of torture contrary to Articles 21 & 24 of the Constitution respectively.
- The right to freedom of expression, association and assembly.
- The right to health regarding access to essential medicines and blood.
- with regard to transparency and accountability, the report points abuse of Parliamentary privileges and instances of non-compliance to due process.

It is important to note that the rule of law is a foundation stone for the efficient functioning of our democratic governance systems and that it is the duty of all stakeholders to uphold the Rule of Law.

I continue to thank the Rule of Law Advisory Panel, the Rule of Law and Strategic Litigation Committee and the secretariat for compiling this report and advising me on issues pertaining to the Rule of Law.

For God and my Country



Simon Peter M. Kinobe

MESSAGE FROM THE CEO

I am honored to present to you the 9th edition of the Uganda Law Society (ULS) Quarterly Rule of Law Report and the 1st edition of 2019. This Report highlights the rule of law developments that have occurred during the review period of January, February and March 2019, whilst providing recommendations to ensure the adherence of the Rule of Law.

The launch of the Quarterly Rule of Law Reports is one of the strategies that the ULS has undertaken in observance of its mandate to protect and uphold the rule of law. This is in addition to several other activities that the ULS engages in as it continues to pursue justice through the observance of the rule of law, including the establishment of Rule of Law Clubs in Universities and Secondary Schools with the aim of skilling the lenses of the young generation on the rule of law.

In that regard, the ULS entered into an agreement with the Public Interest Law Clinic (PILAC) to involve nine rule of law clubs in secondary schools in moot court competitions as they are currently undergoing training in preparation for the competitions. The ULS also continues to strengthen existing rule of law clubs by equipping them with reading and information materials to support them in promoting the rule of law.

This reporting period highlights issues affecting the rule of law and these include; abuse of Human Rights, Transparency and Accountability, Checks and Balances as well as failure by some state organs to follow Due Process. This report aims at raising awareness in all matters pertaining the rule of law amongst the public and the various stakeholders.

As I conclude, I would like to thank the Rule of Law Advisory Panel and the Rule of Law Strategic Committee for their valuable input on this report. I would also like to appreciate the efforts of the ULS Secretariat including the management team and in particular the Rule of Law Department staff who compiled this report.

God bless you all.



Joyce Nalunga Birimumaaso

ACKNOWLEDGEMENTS

This Report was generated with guidance from the ULS Rule of Law Advisory Panel. Special thanks go to the the Advisory Panel chaired by Professor Fredrick E. Ssempebwa and Members - Ms. Gertrude Wamala Karugaba, Mr. Gimara, Mr. Andrew Kasirye, Mrs. Lydia Ochieng Obbo and Ms. Loyola Karobwa.

Additional thanks go to the ULS Rule of Law and Strategic Litigation Committee chaired by Dr. Daniel Ruhweza for their support and to the ULS Rule of Law Department including Ms. Leah Nasasira Bitu and Ms. Mary Nalwoga for their efforts in generating this Report. Thanks to the entire ULS Secretariat and the Management Team for their support.

INTRODUCTION

This is the first quarterly Rule of Law Report of the Uganda Law Society (ULS) for the year 2019 and the 9th issue in the series of this report. The report highlights key rule of law issues that occurred around the country during the months of January, February and March 2019. Given that one of the strategic objectives¹ under the ULS Strategic Plan 2017/2021 is *to promote and uphold the rule law in Uganda*, the report identifies positive aspects during the quarter that have contributed to the promotion of the rule of law and as well points out key issues that threatened the rule of law in the reporting period.

Incidences of human rights violations were predominant during this quarter and these include violations of children's rights, the right to life, the right to health, torture of suspects in police custody, the clamp-down on the right to freedom of expression, association and assembly as well as threats to the economic rights under the East African Community Law.

However, this quarter has seen key developments made by the security agencies which have exercised some level of restraint and professionalism in arresting and handling suspects and people found at public assemblies. In particular, there have been undertakings by the agencies to sanction individual officers that have been involved in transgressions.

In addition to pointing out positive and negative trends that occurred during the reporting period, this report provides recommendations on the legal issues raised to ensure full protection of the rule of law. It is our hope that this report will facilitate the observance of the rule of law among the state and non state actors as well as the public to avoid anarchy in the country.

¹ Strategic Objective 3, ULS Strategic Plan 2017/2021

THE STATE OF HUMAN RIGHTS

During the period of January -March 2019, human rights' abuse was prominent and of particular note was the violation of children's rights, the right to life, the right to freedom of association and assembly, the right to health, cases of torture, as well as the breach of the economic rights under the East African Community Law.

a) Violation of Children's rights

In 1990, Uganda ratified the Convention on the Rights of the Child (CRC). This means that Uganda has an obligation to ensure that all children benefit from special protection measures and assistance, have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; and are informed about and participate in achieving their rights in an accessible and active manner. Article 34 of the 1995 Constitution of Uganda and the Children's Act, 2016 provide for rights and obligations that protect children's welfare in Uganda.

Despite the solid legal framework, the country has witnessed wide spread violation of children's rights during this reporting period. A number of incidents relating to defilement, torture and kidnap occurred as follows;

- A fourteen year old primary school girl was defiled and impregnated by a special police constable attached to Palaro Police Post in Palaro Sub-county in Gulu District.²The ULS is concerned that a policeman who should be at the fore front of keeping the law and order is instead abusing it.
- A teacher from St. Peters Primary School in Kikuube District allegedly beat a ten year old Perus Namukisa into coma on accusations of late coming to school. It was reported that the child sustained several injuries on the left leg and could not walk without a stick.³
- In a separate but similar incident, Robin obang from Aperkira Sub-county in Kaberamaido District was reportedly charged at Kaberamaido Grade one Court for causing grievous bodily harm to his four year old son, Gabriel ogwal.⁴
- This quarter has also noted the exploitation of talented children like Patrick Ssenyonjo alias "Fresh Kid" for personal gains at the expense of the welfare principle.⁵

Legal issue arising:

- whether the legal frame work protecting the rights of children in Uganda is well enforced?

Recommendations:

- The Government should commit adequate resources towards the protection of children in communities by setting up child protection units at village level, identifying risks and protection concerns within villages and take action.
- The Ministries of Education and Sports and Gender, Labour and Social Development should collaborate with the Civil Society organisations and Community Based organizations to strengthen the ability of the community structures to prevent violence against children through massive awareness programs.
- The relevant child protection agencies as empowered by law, including the police should be more stringent in implementing the law for the protection of children's rights.

² Julius Ocungi & Polycya Kalokwera, "Police officer held for defiling 14-year old girl," *Daily Monitor*, February 4, 2019, at P.12

³ Robert Atuhairwe, "Kikuube teacher in trouble over corporal punishment," *New Vision*, January 7, 2019 at P.13

⁴ Micheal Onyinge, "Man who tortured son jailed for two years," *New Vision*, January 16, 2019 at p.10

⁵ Eddie Sejoba, "Government is responsible for Fresh Kid's welfare-Bigirimana," *New Vision*, April 2, 2019. Available at https://www.newvision.co.ug/new_vision/news/1497646/govt-responsible-fresh-kids-welfare-bigirimana last seen on April 05, 2019

- The Government should put in place arrangements to manage talented children like “Fresh Kid” by creating an enabling environment to protect them from exploitation.

b) Protection of the Right to Life

The essence of the right to life is that life is inviolable; a human being has the right to live and in particular, should not be killed by another human being. The right is guaranteed by both, International Instruments such as the International Covenant on Civil and Political Rights which was ratified by Uganda, and Article 22 of the 1995 constitution of Uganda. During this quarter, the following reported incidences marked the transgressions against the right to life:

- A 24 year old Lydia Namirimu was strangled to death by her boyfriend Nsubuga at Busambaga Village in Katabi Town Council, Entebbe wakiso District.⁶
- one Deo Mukisa Makumbi allegedly confessed to have murdered a four year old Elvis Kibuule and his girlfriend, Zuhura Namusoke and hid her in a bush.⁷It should be noted that in both incidents,it was alleged that the police traced for the perpetrators and found that Nsubuga had committed suicide in Luwero District⁸ and arrested Deo Mukisa Makumbi.
- A sixty year old omuhereza Asiimwe was killed by unknown assailants from Igurika village, Muhoro Town Council in Kagadi District.⁹
- Five children in Kyenjojo District were murdered in the middle of the night.¹⁰on a positive note, the police responded immediately to the news, traced the perpetrators whom they found with blood-stained clothes belonging to one of the murdered children.¹¹
- Elvis Buule a five year old child was kidnapped at a ransom of UGX. 800,000 from a make shift restaurant at Bulenga and killed in wakiso District.¹² It was later reported that the police tracked and arrested a one Deo Mukisa Mukiibi allegedly believed to be a serial killer; who confessed to have committed the alleged crime.
- The residents of Kalagala-Gayaza village, Buseese Parish in Mpigi District, woke up to the gruesome murder of two pupils of St. Bernard Nkozi Demonstration School after a search of eight days by police. Nicholas Muyingo’s (aged 10 years) and Peace Nalweyiso’s (aged 12 years) bodies were found by the police, mutilated and dumped in Namagongolo forest at Kalagala-Gayaza village.¹³
- A fourteen year old Peter oscar Muhairwe; a student at Kagera Secondary School was kidnapped on February 3, 2019 from Kaberebere Town Council, Isingiro District and later killed.¹⁴
- A four year old child; Natasha Tendo was found dead in her bed at *Talitha Day and Night Care Centre* in Namasuba Central Zone on Entebbe road in wakiso District.¹⁵ It is alleged that the mother of the child went abroad and left her in the care of the school management which on several occasions mistreated her.¹⁶

6 Kenneth Kazibwe, “Police: Woman killed recently in Entebbe was beaten to death by boyfriend,” *Nile Post*, January 31, 2019. Available at [HTTPS://NILEPOST.CO.UG/2019/01/31/POLICE-WOMAN-KILLED-RECENTLY-IN-ENTEBBE-WAS-beaten-to-death-by-boyfriend](https://nilepost.co.ug/2019/01/31/police-woman-killed-recently-in-entebbe-was-beaten-to-death-by-boyfriend) last accessed on February 13, 2019.

7 Betty Ndagire, “Suspect ‘confess’ to killing child, girlfriend,” *Daily Monitor*, February 8, 2019, at p.9
8 Ibid

9 Alex Tumuhimbise, “Thugs kill man, set body ablaze,” *Daily Monitor*, January 16, 2019. Available at <https://www.monitor.co.ug/News/National/Thugs-kill-ma-set-body-ablaze/688334-4936524-9L6OR6/INDEX.HTML> last accessed on February 13, 2019.

10 Joseph Kato, “Kyenjojo killings were a revenge act, say police,” *Daily Monitor*, March 19, 2019 at 3
11 Ibid

12 James Kabengwa, “Mother narrates son’s kidnap, killing,” *Daily Monitor*, February 11, 2019, at p.3
13 Sadat Mbogo, “Shock as police recover body parts of two missing pupils in Mpigi forest,” *Daily Monitor*, March 18, 2019. Available at <https://www.monitor.co.ug/News/National/Shock-police-recover-body-parts-TWO-MISSING-PUPILS-MPIGI-FOREST/688334-5030672-CFCGK2Z/INDEX.HTML> last accessed on March 20, 2019.

14 Felix Ainebyona, “14-year-old boy kidnapped, killed over Shs 7m ransom,” *Daily Monitor*, February 13, 2019, at p.3

15 Joseph Kato, “School owner arrested after 4-year old dies,” *Daily Monitor*, February 7, 2019, at P.3
16 Ibid

- one Ronald Ssebulime was shot dead by the Uganda Police Force on suspicions of trailing Information and Communications Technology Minister, Hon. Idah Nantaba.¹⁷

Legal issue arising:

- whether sufficient measures to protect the right to life are in place.

Recommendations:

- The Uganda Police Force should conclusively investigate the role of Hon. Idah Nantaba and the police in unlawfully causing the death of Ronald Sebulime and make their findings public.
- Community policing should be strengthened to combat crimes at the local level. The involvement of LC1 structures in community policing to be emphasized.

c) Torture

Torture negates human dignity and breaches national and international law binding on Uganda. As per Article 44(a) of the 1995 Constitution of Uganda, Freedom from torture, inhuman and degrading treatment cannot be derogated from.

However, on March 7, 2019, the Uganda Police Force conducted a security operation in Katwe-Kinyolo, a Kampala Suburb and rounded up a number of crime suspects and detained them at Clock Tower Police Station. It is alleged by some of the detainees that the police cell was packed to maximum and three suspects collapsed in the cells.¹⁸ They were rushed to Mulago hospital and the Kampala Metropolitan Police Spokesperson Patrick onyango confirmed that one of the suspects Bogere omwongo died on arrival.¹⁹ He also stated that the police officer who is alleged to be a crime preventer tortured the suspects against the law and the orders of the Commander in Chief and the Inspector General of Police.

Legal issue arising:

- whether the law and the right against torture are enforced /respected.

Recommendations:

- The Uganda Human Rights Commission should collaborate with security agencies to jointly address any emerging human rights concerns, and, to intensify sensitization of the agencies over the prohibition against torture and ill treatment of suspects while in custody.
- Stern action should be taken against security persons who engage in torture and we also renew our request to the Director of Public Prosecutions to prioritize prosecution of these cases.

d) Protection of the Right to freedom of Expression, Association and Assembly

The right to freedom of expression, freedom of peaceful assembly and freedom of association are fundamental rights that form the basis of the full enjoyment of other rights, and are a cornerstone of democratic societies and indispensable conditions for the full development of the person. These rights are also at the heart of an active, free and engaged civil society. These same rights are provided for in Article 19 of both the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights as well as Article 29 of the 1995 Constitution of Uganda. The following reported incidences are indicative of threats against the enjoyment of these rights and freedoms;

- It was alleged that police officers received an order from the officer-in-charge of events at the Directorate of Crime Intelligence, Detective Superintendent of Police Moses Lukonge to monitor all events, ceremonies and functions, political or civil, and thereafter submit reports to the Director of Crime Intelligence. The purpose of the order and the type of meetings to monitor was not mentioned.²⁰

17 Serestino Tusingwire, "Ssebulime killing was murder – Police," Daily Monitor, March 27, 2019. Available at [HTTPS://WWW.MONITOR.CO.UG/NEWS/NATIONAL/SSEBULIME-KILLING-WAS-MURDER-POLICE/688334-5045056-V90NBH/index.html](https://www.monitor.co.ug/news/national/ssebulime-killing-was-murder-police/688334-5045056-v90NBH/index.html) last accessed on March 28, 2019.

18 NTV News, March 12, 2019. Available at <http://www.ntv.co.ug/news/national/Police-on-the-spot-as-suspect-DIES-IN-CUSTODY/4522324-5022246-J93DRG/INDEX.HTML> last accessed on March 15, 2019

19 Ibid

20 Andrew Bagala, "Police to monitor all meetings in Kampala," Daily Monitor, January 10, 2018 at P.5

- The revised Stage Plays and Public Entertainment Bill 2018 meant to regulate public entertainment and stage plays, performing artists and events’ organizers will require all performing artists to deposit a copy of their published works with government, and also, register with government and get annual practicing licenses from the Ministry responsible for culture.²¹ It should be noted that the revision of this Act comes in the wake of security measures blocking concerts of popular musician and now Member of Parliament for Kyadondo East, Hon. Robert Kyagulanyi Sentamu²², and, other assemblies.²³ The revisions are a threat to freedom of expression, association and assembly.
- The Uganda Police Force blocked the planned Democratic Party reunion which was going to take place in Jinja rugby grounds; on allegations that it was illegal and that the party did not follow the right guidelines provided for in section 5 of the Public order Management Act 2013.²⁴

It should be noted that members of the public have a right to express themselves freely and agitate for any political ideology without any interference. whereas the ULS appreciates Government’s efforts geared towards maintaining law and order during public meetings; the Uganda Police Force and other security organs have misapplied the provisions of the Public order Management Act 2013 (PoMA) to suppress the public by dispersing assemblies without any reason. of particular note is S.9(2)(f) of PoMA which gives powers to the police to disperse defiant or unruly crowds or individuals at a public meeting in order to prevent violence, restore order and preserve peace which section has been unconstitutionally used by police officers to prohibit public meetings and associations unreasonably.

The ULS asserts that the right to freedom of expression, association and assembly are fundamental principles of human rights which should be respected and protected by the state.

Legal issue arising:

- whether the right to freedom of expression, association and peaceful assembly is protected by the state.

Recommendations:

- The State should enforce legislative and administrative laws to protect freedom of assembly, association and expression in line with their international obligations under the International and constitutional obligations.
- The Public order Management Act and other measures in place should be applied to maintaining law and order as intended by the law and not for purposes of stifling peoples’ rights.
- The hearing of the Constitutional petition challenging the constitutionality of some provisions of the Public order Management Act should be expedited.
- The Uganda Police Force should increase trainings for Police officers on Human Rights especially, on how to handle demonstrations and the need for use of reasonable force.
- All efforts should be made to guarantee the political neutrality of police as a service for all Ugandans regardless of their political persuasion.

e) The Right to health in regards to access to essential medicines and blood

Lately, the media has been awash with news of the lack of essential health drugs all over the country including blood and lifesaving medicines. The following issues were highlighted in this quarter as below;

21 Salim Segawa, “A controversial government draft bill that seeks to regulate artists explained,” *pulse live.ug*, January 17, 2019. Retrieved from <https://www.pulselive.ug/news/local/a-controversial-government-draft-bill-that-seeks-to-regulate-artistes-explained/01klfm7> last accessed on February 14, 2019

22 Available at [HTTP://WWW.ULS.OR.UG/SITE/ASSETS/FILES/1321/ULS_2018_-_RULE_OF_LAW_4TH_QUARTERLY_REPORT_DEC_2018.PDF](http://www.uls.or.ug/site/assets/files/1321/uls_2018_-_rule_of_law_4th_quarterly_report_dec_2018.pdf)

23 Retrieved at [HTTP://WWW.ULS.OR.UG/SITE/ASSETS/FILES/1360/ULS_2018_-_RULE_OF_LAW_3RD_QUARTERLY_REPORT_SEPT_2018.PDF](http://www.uls.or.ug/site/assets/files/1360/uls_2018_-_rule_of_law_3rd_quarterly_report_sept_2018.pdf)

24 George Okello, “Tension as police moves to block DP reunion meeting in Jinja”, *PML Daily*, February 20, 2019. Retrieved from [HTTP://WWW.PMLDAILY.COM/NEWS/2019/02/TENSION-AS-POLICE-MOVES-TO-BLOCK-DP-REUNION-meeting-in-jinja.html](http://www.pmldaily.com/news/2019/02/tension-as-police-moves-to-block-dp-reunion-meeting-in-jinja.html) last accessed on February 25, 2019

- Reports of blood stock outs thereby affecting operations of hospitals like Kawempe General Hospital which had only 2 units of blood in its storage fridges and had ceased emergency cesarean operations on patients leaving them unattended to and in immense pain.²⁵
- Hospitals were also reported to have run out of essential supplies used in assisting women deliver babies including catheters, gloves, syringes and oxytocin to stop post-delivery hemorrhaging.²⁶

The lack of blood or lifesaving drugs raises certain human rights questions and the duty of the government to fulfill the right to health. The duty of the state is highlighted in Article 20(2) of the Constitution of the Republic of Uganda which obliges the state to respect, protect and fulfill human rights including the right to health. Uganda has ratified a number of international instruments which guarantee the right to health like Article 12 of the international covenant on Economic, Social and Cultural Rights (ICESCR), Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 16 of the African Charter on Human and Peoples' Rights (African Charter). The Constitution of Uganda also provides for the duty of the state to ensure access to medical services under and objectives xIV and xx of the National objectives and Directive Principles of State Policy.

The absence of life saving health commodities within public health facilities infringes on the right to health with the state violating its obligation to fulfill the right to health by failing to ensure availability of life saving commodities within public health facilities. This failure has led to mortality and morbidity and has left health workers constrained from doing their work since they do not have the necessary health commodities to save lives. whenever health is compromised the fundamental human right to life is threatened. Article 50 of the 1995 Uganda constitution makes threats to rights actionable.

Legal issue arising:

- whether the lack of/shortage of drugs, and other medical supplies infringes the right to health.

Recommendations:

- The Governments should ensure that essential supplies for the preservation of life are available at all medical facilities under its jurisdiction.
- The Government should come up with innovative ways of ensuring availability of blood in sufficient quantities. Innovations include sensitization over the virtues of donating blood, and, making it conducive and convenient for potential donors.
- It is high time that a comprehensive health insurance scheme is conceived so as to make health services and facilities more accessible.

f) Breach of Economic Rights under the East African Community Law

The East African Community (EAC) was established with a vision to set up a prosperous, competitive, secure, stable and politically united East Africa; and provide platform to widen and deepen Economic, Political, Social and Culture integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value added production, trade and investments. Pursuant to this objective, the Common Market Protocol was adopted by the Partner States of the Community. The Protocol guarantees the people of the region the rights of free movement of, persons, goods and services among other rights.

However, on February 27, 2019, the Rwandan authorities blocked vehicles and Ugandans from entering or exiting the country at Katuna Border. The Rwandan security officials barred trucks and buses carrying goods and passengers from crossing either side which left several traders, passengers and truck drivers stranded at Katuna border (Ugandan side). It was stated that this was a result of the deteriorating relationship between Rwanda and Uganda due to counter accusations of murder, torture, espionage, kidnap of each other's nationals.²⁷ So far, neither of the States concerned has taken concrete steps to

²⁵ Zurah Nakabugo, "Uganda; death traps in hospitals as blood runs out again. Available at <https://allafrica.com/stories/201801240152.html>

²⁶ Lillian Namagembe, "Hospitals face drug stock outs", *Daily Monitor*, August 1st 2018.

²⁷ URN, "Ugandan nationals, vehicles denied entry into Rwanda," *The Observer*, March 1, 2019. Available

resolve the differences that may have caused the closure of the border posts. This has greatly affected the business community and infringed on the rights guaranteed by East African Community Law.

Legal issue arising:

- whether there are sufficient mechanisms in place to prevent recurrence and/or facilitate dispute resolution between member states.

Recommendations:

- Steps should be taken to realign and strengthen the structures of the East African Community to facilitate the process of dispute resolution among the East African partner states using the framework provided for in the EAC Treaty.
- The Ministry of Trade, Industry and Cooperatives should make an inquiry into the current state of Ugandan traders affected by the closure of the Border and should be given all the necessary support to enable them continue trading.

DUE PROCESS AND CLIMATE OF LEGALITY

The state and every citizen are required to respect all legal rights that are owed to a person. Actions done without following the exact course of the law constitute a violation which offends that law. During this period, some issues pertaining to legality were reported;

a) Alleged Violations by Military Officers

Two military personnel being bodyguards to Uganda's ambassador to Burundi (RTD) Major General Matayo Kyaligonza assaulted a one Esther Namaganda a traffic officer on duty. This happened when the traffic officer tried to stop the motorcade of the major general from making a u-turn in the middle of the road at Seeta, Mukono District.²⁸ During the scuffle, it was reported that Major Kyaligonza and his bodyguards also assaulted a Uganda Broadcasting Corporation journalist, Peter otai who was taking pictures of the incident.²⁹

Major General Kasirye Ggwanga who is serving as presidential advisor on security is alleged to have maliciously damaged civilian properties. It is also alleged that he is in the custom of defying police summons. The same Major General Kasirye is alleged to have shot at the car tyres of a local music artist, Catherine Kusasira³⁰ because Kusasira's aides failed to switch off the loud music in her car despite the demands from the officer and his son to have the music reduced. It may be recalled that in its July - September quarterly Report of 2017, The ULS Rule of Law Committee reported this officer as bragging for burning a grader he found at his daughter's land in Lubowa, Entebbe road and vowed to deal ruthlessly with land grabbers.³¹

Legal issue arising:

- whether the conduct of the said military officers is professional and disciplined as envisioned by Article 208 of the 1995 Constitution of Uganda.

at <https://observer.ug/news/headlines/60008-ugandan-nationals-vehicles-denied-entry-into-rwanda> last accessed on March 19, 2019.

28 URN, "Gen Kyaligonza's body guards arrested for assaulting a traffic officer," February 25, 2019. Available at [HTTPS://OBSERVER.UG/NEWS/HEADLINES/59963-GEN-KYALIGONZA-S-GUARDS-ARRESTED-FOR-ASSAULTING-A-TRAFFIC-OFFICER](https://observer.ug/news/headlines/59963-gen-kyaligonza-s-guards-arrested-for-assaulting-a-traffic-officer) last accessed on February 25, 2019.

29 Ibid

30 URN, "Police probes Kasirye Gwanga for shooting at Kusasira's car," January 30, 2019. Available at <https://observer.ug/news/headlines/59776-police-probes-kasirye-gwanga-for-shooting-at-kusasira-car> last accessed on February 26, 2019.

31 Kenneth Kazibwe, "Kasirye Gwanga sued for burning tractor," November 17, 2017 <https://nilepost.co.ug/2017/11/15/kasirye-gwanga-sued-for-burning-tractor> last accessed on February 26, 2019

Recommendations:

- Thorough investigations into the incidents should be undertaken and necessary action taken against the army officers by the Army's Disciplinary Committee Unit.
- Stern action should be taken against Senior Military officers acting with impunity to avoid eroding the confidence UPDF has built over time.

b) Deportation of MTN employees

on February 14, 2019, the MTN Chief Executive officer, Wim Vanhelleputte was deported from Uganda over alleged gross crimes committed by MTN staff, including being a threat to national security.³² This came days after the arrest and deportation of three other senior employees of the telecommunication including the Chief Marketing officer, Olivier Prentout (France), mobile money general manager, Elsa Mussolini (Italian) and Anne Tabura who was the general manager for sales and distribution at the MTN telecommunications.

These officials were bundled up by police and were immediately deported back to their home countries on allegations of being a threat to national security. One of the reasons for the deportations as alleged by the media is that MTN was tapping phones of ministers, security chiefs and the state house.³³ Whatever the reasons, the issue is whether due process was applied to the process.

Section 60 of Uganda Citizenship and Immigration Control Act CAP 66 gives powers to the Minister to make in writing an order of any prohibited person present in Uganda to be deported out of Uganda. Same section further explains that the person will have to be brought to court and informed of the deportation order and if aggrieved, will be given 15 days within which to appeal while in lawful custody.

Legal issue arising:

- whether due process was followed while deporting the MTN officials.

Recommendations:

- The legality of the deportations should be reviewed by the court seized with the matters.
- The relevant authorities should always have regard to the right procedures for deportation as provided for in Uganda Citizenship and Immigration Control Act CAP 66 while deporting individuals.

c) State House overreach into the work of statutory institutions

During this reporting period, President Yoweri Museveni created a special Criminal Investigation Directorate (CID) by the State House Anti-Corruption Unit headed by Lt. Col. Edith Nakalema. This unit is meant to reinforce the fight against corruption by supplementing other existing organs of Government mandated to do similar responsibilities.³⁴ It started work on a high note and several arrests have been made pending prosecutions and a number of investigations are underway. Of particular note was the recent arrest of senior government officials in Mbarara on February 24, 2019 on allegations of acquiring houses and plots of land on Kamukuzi hill³⁵ and district veterinary land.³⁶ The creation of such units in

³² Haggai Matsiko, "Deportations at MTN," *The Independent*, February 25 2019. Available at <https://www.independent.co.ug/deportations-at-mtn> last accessed on March 28, 2019

³³ URN, "MTN CEO was deported for 'tapping state house phone calls'," *The Observer*, February 25, 2019. Available at <https://observer.ug/news/headlines/59965-mtn-ceo-was-deported-for-tapping-state-house-phone-calls> last accessed on March 28, 2019

³⁴ Obed K. Katureebe, "State House Anti-Corruption Unit requires your support", *Daily Monitor*, February 20, 2019 <https://www.monitor.co.ug/OpEd/Commentary/State-House-Anti-Corruption-Unit-requires-your-support/689364-4990656-11SIFDX/INDEX.HTML> last accessed on March 28, 2019

³⁵ Abdulkarim Ssengendo, "Anti-Corruption unit storms Mbarara, officials quizzed over corruption," *Sunday Vision*, February 24, 2019, P.6.

³⁶ Ibid

state house raises questions of their institutional mandate and procedures under which they conduct their work.

Article 225 of the Constitution of Uganda stipulates the mandate of the Inspector General of Government (IGG) which include eliminating and fostering the elimination of corruption, abuse of authority and of public office. It should be noted that putting in place irrational units without a legal framework undermines the credibility of the IGG particularly where there are complaints of underfunding that constitutional institution.

Legal issue:

- whether there is a need for an overall institutional reform in handling cases of bribery and corruption.

Recommendations

- The office of the IGG should be strengthened structurally and adequately financed so as to manage its constitutional mandate.

d) Government financial support to the Lubowa Hospital Investor

Additionally, in this quarter there was great public concern when the Parliament of Uganda adopted the report of the Committee on the National Economy that approved the proposal to issue promissory notes not exceeding US\$379.71 million to FINASI/RoKo to guarantee a Private Public Partnership (PPP) of the construction of Special Purpose Vehicle (SPV) Limited for the financing of a privately conceived International Specialized Hospital at Lubowa, in wakiso District.³⁷ FINASI International will earn UGX: 8billion annually as interest for six years for the construction of the proposed hospital. It was revealed shortly that the new Mulago National Referral Hospital needs a fraction of about \$1million to be completed.

However, the process for entering into the agreement did not follow established procedures provided for in the 1995 Constitution of Uganda and the PPP Act. There was also lack of transparency in conceptualizing and negotiating the PPP. It should also be noted that prioritizing of this hospital given the various challenges facing the health sector has also been contested.³⁸

Allocating significant resources to a new hospital which will only cater for a small section of the population while the majority of the population are served by hospitals with limited drugs and medical work is mis-allocation that affects the rights to health for all.

Legal issue arising:

- whether the Ministry of Finance Planning and Economic Development and Ministry of Health have rationalized the adequacy of the existing health hospital facilities before proposing expensive support to a private initiative.
- whether due procurement process was followed.

Recommendations:

- The Government should give priority to the already existing health facilities by financing and revamping them to be able to provide good quality health service to Ugandans.
- There should be strict accountability measures for funds advanced in support of initiatives that are privately conceived.
- PPPs that involve use of public resources should be entered conceptualized and negotiated into a transparent and participatory manner that follows the established laws and procedures.
- The ULS should also consider contributing to the legal challenge before the court regarding Lubowa hospital as Amicus curiae.

37 — Salim Namusobya, “Lubowa hospital: Uganda should learn from the Lesotho experience,” Daily Monitor, March 27, 2019. Available at <https://www.monitor.co.ug/OpEd/Commentary/Lubowa-hospital-Uganda-LESOTHO-EXPERIENCE-ROKO/689364-5043736-L31VQ9/INDEX.HTML> last accessed on March 28, 2019.

38 Ibid

TRANSPARENCY AND ACCOUNTABILITY

During the period of January – March, the following incident occurred;

a) IGG asks Internal Security Organization (ISO) to investigate COSASE

on February 19, 2019, the Inspector General of Government in a letter directed ISO Director General, Kaka Bagyenda to investigate a Committee on Commissions, Statutory Authorities and State Enterprises (CoSASE) Members of Parliament on allegations of bribery after her office received a complaint filed by a whistle blower that the MPs had received huge sums of money from the Central Bank and some of the shareholders of the defunct banks in particular Crane Bank.³⁹ The speaker, Rebecca Kadaga acknowledged receipt of the letter and responded that this was a breach of separation of powers. The speaker added that the intended investigations were an attack on Parliamentary investigations and black mail on the house and its members in the performance of their constitutionally granted mandate.⁴⁰ She further cited Parliament (Powers and Privileges) Act 1955 CAP 258 which guarantees immunity and dignity to members of Parliament from any legal proceedings.

The issues that arise are: (a) who holds Parliament accountable and restrain it from abusing its parliamentary privileges; and (b) question arise whether it is appropriate for the IGG to mandate ISO to investigate bribery at parliament. The Security organisations Act Cap 305 establishes the Internal Security organization whose mandate is to collect, receive and process internal and external intelligence data on the security of Uganda and not to inquire into bribery and security scandals.

Legal issues arising:

- whether Parliamentary privileges extend to unlawful acts of Members of Parliament.
- whether the IGG is legally empowered to investigate corruption and bribery in Parliament.

Recommendations:

- The office of the IGG has a legal mandate to hold all public institutions including members of Parliament accountable in the exercise of their duties. It can therefore exercise the mandate without recourse to organs whose functions are not related to its mandate.
- Parliament should be accountable in case of any abuse of Parliamentary privilege and this privilege cannot be used as a defense for criminal actions.

SEPARATION OF POWERS

Article 128 of the Constitution of Uganda stipulates the independence of the judiciary in the exercise of its judicial power and shall not be subject to the control or direction of any person or authority. Article 128 (3) further states that all organs and agencies of the State shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts.

In that regard, the judges have over time been pushing to increase their numbers as well as improve their welfare.⁴¹ This is due to case backlog in courts of law and the many people languishing in prisons due to inefficiency and effectiveness in the judicial system. During the 21st annual judges conference held on January 28, 2019 at Kampala Serena Hotel, the Honourable Chief justice, Bart Katureebe stated that statistics from the judiciary show that each judicial officer is expected to dispose of about six cases each day which is not humanly possible.⁴²

In response, the President aired the view that enhancing the size of, and, the terms of the judiciary was

39 Max Patrick Ocaido, “IGG Mulyagonja accused of bias against COSASE in favour of BOU officials,” The Kampala Post, February 28, 2019. Available at <https://kampalapost.com/content/news/igg-mulyagonja-accused-bias-against-cosase-favour-bou-officials> last seen on March 29, 2019

40 ibid

41 The Independent, “No pay rise yet for judicial officers – Museveni,” January 29, 2019. Available at <https://www.independent.co.ug/no-pay-rise-yet-for-judicial-officers-museveni> last seen on March 29, 2019

42 Ibid

not a priority in view of the available funds; that what was needed was a harmonized salary structure for all public servants. It should be noted that the judiciary is a separate organ of government but has not been accorded this status institutionally and finance wise comparison to parliament.

Similarly, Parliament is currently considering the Administration of Judiciary Bill but the Bill has been shelved for further consultations and also to address issues whether judges should retire with their current salary.

Legal issue arising:

- whether the judiciary is supported to exercise its mandate independently without the interference with other organs of the government.

Recommendations:

- For effective and efficient administration of justice, the judiciary should be accorded its proper constitutional status as an independent organ of government. This entails a legal framework that shall guarantee adequate resources and financial autonomy.
- Adequacy of judicial personnel should be determined with reference to the population, the necessary infrastructure and the capacity of the current levels of staffing to cope with the workload.
- Good terms of service including retirement schemes are a necessity for the efficient administration of justice.
- The administration of the Judiciary Bill should be passed to allow judges retire with their salaries and benefits to avoid temptation to be corrupt by judicial officers and also address the fact that judges are not allowed to do private business while serving as judicial officers.

Updates on Recommendations from the previous quarterly Reports

Recommendations		Updates
<p>ULS First quarterly Rule of Law Report 2018</p>	<p>Protection of Environmental rights <u>Addressed to National Forestry Authority</u></p> <ul style="list-style-type: none"> • There is a need to carry out a comprehensive investigation into illegal logging and the general utilization of the forest reserves, with a view to prosecute the culprits 	<p>on the 4th of January 2019, the Executive Director, Mr. Tom obongokello of National Forestry Authority (NFA) announced the suspension of the supervisor for Mujuzi and Kachucu forest reserves in Masaka District, Rogers Abigaas a result of his persistent deforestation and illegal logging activities. Mr. Abiga was immediately replaced with two other staff to guard the forest with strict instructions to corroborate with the local community to protect the forest reserve from any illegal loggers.</p>

CONCLUSION

Although minimal positive developments towards the promotion and protection of human rights and the rule of law have been observed during the review period as highlighted in this report, the ULS still noted issues of paramount abuse of human rights and of particular note abuse of children's rights, the right to life, torture and the right to health.

Therefore, we still recommend that continued adherence to the promotion and protection of the rule of law for both the public and the State be earnestly observed.

“As we know, the rule of law is a measure of society’s civilization. If you want to know the level of civilization of any society, measure the extent to which the rule of law applies.” Amama Mbabazi, 2012

**Uganda Law Society
Plot 5A John Babiha Road
P. O. Box 426, Kampala
Phone: +256 312 262420;
0800100150/1 (Toll Free)
www.uls.or.ug**